IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.L.P..No. 1032 of 2007()

ST.2615/2005 of J.M.F.C.,VADAKARA
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PETITIONER/COMPLAINANT:

M.T.MOHANAN, S/O.GOPALAN,
MEETHALA THAYYIL HOUSE, PTHUPPANAM PO,
VADAKARA REP. BY P.A.HOLDER, M.T.BALAN,
S/O.GOPALAN, MEETHALA THAYYIL HOUSE,
PTHUPPANAM P.O., VADAKARA.

BY ADV. SRI.P.NARAYANAN

RESPONDENTS: ACCUSED
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1. K.K.PRAKASHAN, AGED 48 YEARS,
KOOLIKANDIYIL HOUSE, RAYARANGOTH P.O.,
VADAKARA.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

R2-BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.1032 OF 2007

Dated this the 26th day of October, 2007.

O R D E R

This is an application for special leave to appeal against the order in S.T.No.2615/2005 on the file of the Judicial Magistrate of First Class, Vadakara. The petitioner/complainant filed a complaint alleging commission of an offence punishable under Section 138 of the N.I.Act, 1881 by the 1st respondent/accused as the cheque alleged to have been issued by the 1st respondent has been dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. On complying the statutory provisions regarding notice etc., and on seeing that the amount covered by the cheque has not been paid by the 1st respondent, a complaint has been filed before the court. The trial court after taking cognizance of the complaint issued summons to the accused and the accused appeared before the court on 29.11.2006 and thereafter, the case has been posted for evidence on 29.3.2007, 4.6.2007,30.7.2007 and 31.7.2007. On all these posting dates, the petitioner/complainant remains absent from the court. Hence, by the impugned order the trial court acquitted the 1st respondent.

2. It is stated in the Appeal Memorandum that the trial court ought not have passed the impugned order as there are sufficient reasons for the petitioner to keep away from the court. To prove this stand, the petitioner has produced Annexure – I medical reference card issued by Dr. PGM, Medical College Hospital, Kozhikode. This card is dated 22.5.2007. Name of ailment is also written as Fistula in ano. On going through the medical reference card, it is to be noted that the certificate has been issued on 22nd May, 2007. The name of the patient is written as Balan. But the name of the petitioner is Mohanan. So, this certificate cannot be acted on. This certificate is also not related to the date or the date shown in the certificate as no nexus with the date of the order impugned. In the above circumstances, the reason stated by the petitioner for non-appearance before the court on 29.11.2007,29.3.2007,4.6.2007 and 30.7.2007 has no relation. As per Section 256(1) of the Code of Criminal Procedure, the court is empowered to acquit an accused in the absence of a complaint before the court. Though the judgments of this Court reported in **Don Bosco v. Partech Computers Ltd**.(2005 (2) KLT 1003) and **G.F.S.Chit & Loans (P) Ltd. v. Rajesh** (2006(3) KLT 825) it is held

that unmerited disposals of complaints by the trial court would affect dispensation of justice and the court shall exercise judicial discretion while invoking the power under Section 256(1) of the Code. A reading of the order would show that the petitioner/complainant was absent for more than three days without any representation or any reason for his absence.

In the above circumstances, this Court is of the view that the order impugned is perfectly justifiable and it requires no interference. Accordingly, the special leave petition stands dismissed.

K. THANKAPPAN, JUDGE.

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